

they do not regard the exemption as a missed opportunity for them to exercise their emergency plan. The State and local governments within the Point Beach EPZ participated in the October 11, 1995, exercise at the nearby Kewaunee Nuclear Power Plant. The licensee's next emergency preparedness exercise is scheduled for August 1996 and will include the participation of State and local government emergency response organizations.

The licensee states that the 1995 exercise, as planned, is anticipated to have a negative impact on the licensee's oversight of the storage of spent fuel in an independent spent fuel storage installation at the Point Beach Nuclear Plant. The licensee had hoped to load their first dry storage container prior to mid-September. However, due to various reasons, they are now planning to load the first container in early December following the Point Beach Unit 2 refueling outage which is scheduled to be completed by the end of November. The licensee states that it is prudent to load a dry storage container as soon as possible in order to minimize the time that Point Beach will not have the capacity for a full-core offload. In addition, the licensee states that emergency response personnel who would be involved in the emergency exercise will be involved in oversight of the process for loading the storage containers.

#### IV.

Based on a review of the licensee's request for an exemption for the requirement to conduct an exercise of the Point Beach Nuclear Plant Emergency Plan in 1995, the NRC staff finds that performance of the 1995 utility-only annual exercise is not needed to achieve the underlying purpose of the regulation, that is, to demonstrate that the state of emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. The licensee has demonstrated excellent performance in the emergency preparedness area. The integrated emergency preparedness drill in August of 1995 provided a good test of the emergency preparedness program. The licensee performed a thorough critique of the drill and no deficiencies were identified during the drill. The licensee plans to correct weaknesses which were identified during the drill prior to the 1996 full-participation exercise.

The Commission has determined, pursuant to 10 CFR Part 50.12, that this exemption as described in Section II above is authorized by law, will not

present an undue risk to the public health and safety, and is consistent with the common defense and security. Furthermore, the Commission has determined that special circumstances as provided in 10 CFR 50.12(a)(2)(ii) are present in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule.

The Commission hereby grants a one-time exemption from the requirements of 10 CFR Part 50, Appendix E, Section IV.F.2.b, for annually exercising the onsite Emergency Plan at the Point Beach Nuclear Plant in the year 1995.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (60 FR 58685).

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.  
Jack W. Roe,

*Director, Division of Reactor Projects III/IV,  
Office of Nuclear Reactor Regulation.*

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## PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

### Meetings

Notice is hereby given of the meetings of the Prospective Payment Assessment Commission on Tuesday and Wednesday, December 12 and 13, 1995 at the Madison Hotel, 15th & M Streets, NW, Washington, DC, 202/862-1600.

The Full Commission will convene at 9:00 a.m. on December 12, 1995, and adjourn at approximately 5:15 p.m. On Wednesday, December 13, 1995, the meeting will convene at 8:30 a.m. and adjourn at approximately 3:30 p.m. The meetings will be held in Executive Chambers 1, 2, and 3 each day.

All meetings are open to the public.

Donald A. Young,

*Executive Director.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-36513; File No. SR-CBOE-95-59]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 to Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Requirement to Make Prior Arrangements or Obtain Other Assurances Before Engaging in Short Sales

November 27, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on October 19, 1995, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On October 31, 1995, the Exchange submitted Amendment No. 1 ("Amendment No. 1") to the proposal to reduce the number of days in which a customer must assure delivery of the subject securities from five days to three days.<sup>1</sup> The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to make certain changes to its rules relating to the requirement to make prior arrangements to borrow stock or to obtain other assurances that delivery can be made on settlement date before a member or person associated with a member may sell short. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has

<sup>1</sup> Letter from Timothy Thompson, CBOE, to Michael Walinskas, SEC, dated October 31, 1995.

prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of this rule proposal is to establish procedures and rules regarding the need to make prior arrangements to borrow stock, warrants, or other securities that trade subject to Chapter 30 of the Exchange's rules, or to otherwise ensure availability of the subject securities before engaging in short sales. The change involves the adoption of Interpretation .04 to Rule 30.20, "Long" and "Short" Sales. Interpretation .04 is similar to rules of other securities exchanges<sup>2</sup> and would require that member organizations who effect short sales for their own account or for the accounts of customers to make an affirmative determination that delivery of the subject securities can be made on settlement date. The purpose for this rule proposal is to ensure that borrowings and short sales do not outpace the supply of deliverable stock, thus, leading to potential systematic problems. In the case of the short selling of members' proprietary positions, the proposal is intended to address unnecessary speculation in connection with the short selling of broker-dealers' proprietary positions caused by the members' ability to go short without securities to cover the short position. The proposed amendment, as with the rules of the other securities exchanges, would not apply to bona fide market making transactions by a member in securities in which it is a registered market-maker. This market-maker exemption recognizes that many short selling transactions are engaged in by market-makers to enhance market liquidity, which is beneficial to the market and thus should not be unduly restricted.

Interpretation .04 also describes the type of "affirmative determinations" that must be obtained by the member or person associated with the member to ensure that the securities will be available. The member or person associated with the member is obligated to keep a written record of each "affirmative determination." If a customer assures delivery, the written

affirmative determination must record the present location of the securities in question, whether they are in good deliverable form and the customer's ability to deliver them to the member within three business days.<sup>3</sup> If the member or person associated with a member locates the stock, the affirmative determination must record the identity of the individual and firm contacted who offer assurance that the shares would be delivered or that were available for borrowing by settlement date and the number of shares needed to cover the short sale. The requirement to keep a written record of each affirmative determination serves two purposes: first, the written record allows the Exchange to audit compliance with the Rule, and second, the written record provides the member firm with evidence to pursue its own resolution in the event of a default.

By ensuring that securities are available for borrowing and for delivery, the Exchange believes the rule proposal will help to prevent situations where there is a shortage of deliverable stock as well as failures to deliver. By facilitating short sales and decreasing the likelihood of a fail, the Exchange believes the rule proposal is consistent with Section 6(b) of the Act in general and Section 6(b)(5) in particular by providing rules that facilitate transactions in securities, remove impediments to a free and open market and protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) was provided to the Commission for its review at least five business days prior to the filing date; and (4) does not

become operative for 30 days from October 31, 1995, the rule change proposal has become effective pursuant to Section 19 (b)(3)(A) of the Act and Rule 19b-4(e)(6) thereunder. In particular, the Commission believes the proposal qualifies as a "noncontroversial filing" in that the proposed amendments do not significantly affect the protection of investors or the public interest and do not impose any significant burden on competition. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-95-59 and should be submitted by December 26, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

Margaret H. McFarland,

*Deputy Secretary.*

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<sup>2</sup> See e.g., New York Stock Exchange ("NYSE") Rule 440C (and NYSE Information Memo 91-10, *Deliveries Against Short Sales*, (Oct. 18, 1991)) and Interpretation of the Board of Governors of the National Association of Securities Dealers, Inc. ("NASD"), *Prompt Receipt and Delivery of Securities*, under Article III, Section 1 of the NASD Rules of Fair Practice.

<sup>3</sup> See Amendment No. 1. This reduction from five days to three days complies with the normal settlement schedule for equity securities.

<sup>4</sup> 17 CFR 200.30-3(a)(12) (1994).